

Message Text

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PAGE 01 OECD P 05022 01 OF 07 191817Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

OIC-02 STR-04 FTC-01 L-03 H-02 PA-01 PRS-01 USIA-06

SS-15 NSC-05 AGR-05 /121 W
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R 191748Z FEB 76

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LIMITED OFFICIAL USE SECTION 01 OF 07 OECD PARIS 05022

PASS: EB FOR BOEKER, L FOR FELDMAN, TREASURY FOR LANGE,
COMMERCE FOR ARRILL, JUSTICE FOR DAVIDOW' CIEP
FOR GRANFIELD

E.O.11652: N/A

TAGS: EINV, EFIN, OECD

SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
INTERNATIONAL ENTERPRISES (CIME) - DRAFTING
GROUP MEETING, FEBRUARY 16-17, 1976

REFS.: (A) IME/WP/76.6, (B) IME/WP/76.9, (C) IME/WP/76.10
ADDENDUM 1, (D) IME/WP/76.5, (E) IME/WP/76.8,
(F) IME(76)1, (G) IME(76)2, (H) IME(76)3,
(I) OECD PARIS 3095

1. SUMMARY. EXPANDED DRAFTING GROUP MET FEB 16-17 TO
CONSIDER FIVE SECRETARIAT DOCUMENTS ON GUIDELINES FOR
MNE'S (REFDOC B), NATIONAL TREATMENT (REFDOC A),
INCENTIVES/DISINCENTIVES (REFDOC D), CONSULTATION PROCE-
DURES FOR GUIDELINES (REFDOC E), AND DRAFT DECLARATION
("CHAPEAU") FOR JUNE MINISTERIAL MEETING PACKAGING ALL
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PAGE 02 OECD P 05022 01 OF 07 191817Z

THREE INSTRUMENTS (REFDOC C). SECRETARIAT DOCUMENTS

OPENED UP NUMBER OF MATTERS PREVIOUSLY RESOLVED TO U.S. SATISFACTION, IGNORED OR SLIGHTED COMPROMISE FORMULAS PROPOSED BY CIME CHAIRMAN ON MAJOR OUTSTANDING ISSUES, AND RAISED NEW QUESTIONS WHICH COULD GREATLY COMPLICATE EFFORTS TO REACH FINAL AGREEMENT ON PACKAGE BY JUNE. WITH CONSIDERABLE EFFORT AND DIFFICULTY, U.S. DEL WAS ABLE SUBSTANTIALLY TO OVERCOME THESE OBSTACLES AND MAINTAIN PROGRESS PREVIOUSLY MADE ON VARIOUS TEXTS, ALTHOUGH LITTLE NEW GROUND WAS BROKEN ON OTHER ISSUES. DRAFTING GROUP PREPARED NEW TEXT ON MNE CONSULTATION PROCEDURES BASED ON CIME CHAIRMAN'S FORMULA AND A NEW TRANSITIONAL PARAGRAPH (PARTLY BRACKETED) FOR NATIONAL TREATMENT INSTRUMENT. (SEVERAL U.S. CHANGES WERE MADE IN NATIONAL TREATMENT TEXT INCLUDING REFERENCE TO INTERNATIONAL LAW IN PARA ONE OF DECLARATION.) IT WAS AGREED THAT SECRETARIAT'S NEW DOCUMENT ON INCENTIVES/DISINCENTIVES (REFDOC D) WOULD BE WITHDRAWN AND THAT CIME WOULD BE ASKED TO CONSIDER SUBJECT AGAIN ON BASIS OF THE CHAIRMAN'S DRAFT (REFTEL I) CIRCULATED AT LAST CIME MEETING. DRAFTING GROUP ALSO DECIDED THAT SECRETARIAT SHOULD REVISE DRAFT "CHAPEAU" FOR THE PACKAGE TO ESTABLISH BETTER BALANCE AMONG ITS THREE PARTS AND TO CONFORM MORE CLOSELY TO LANGUAGE OF AGREED INTRODUCTION TO MNE GUIDELINES. END SUMMARY.

2. EXPANDED DRAFTING GROUP INCLUDED DELEGATIONS REPRESENTING U.S., FRG, U.K., BELGIUM, NETHERLANDS, SWEDEN, JAPAN, EC, SWITZERLAND, FINLAND, GREECE, TURKEY, ITALY, SPAIN, AUSTRALIA, DENMARK AND NEW ZEALAND.

CONSULTATIONS ON MNE GUIDELINES

3. SECRETARIAT TEXT (REFDOC E) INTRODUCED NUMBER OF IMPORTANT CHANGES INCLUDING REVISION OF PARA 1 WHICH BROADENED TERMS OF REFERENCE FOR BOTH INTER-GOVERNMENTAL CONSULTATIONS AND BIAC/TUAC INPUTS, OPENED POSSIBILITY OF MATTERS BEING BROUGHT BEFORE COMMITTEE BY OUTSIDE PARTIES AND ESTABLISHED PROCEDURES FOR INTERPRETATION OF GUIDELINES BY MAJORITY VOTE OF COMMITTEE. THERE WAS STRONG CONSENSUS IN DRAFTING GROUP THAT CIME SHOULD LIMITED OFFICIAL USE

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PAGE 03 OECD P 05022 01 OF 07 191817Z

CONCENTRATE ON BASIC UNRESOLVED ISSUE OF PARTICIPATION OF ENTERPRISES IN CONSULTATIONS AND SHOULD NOT ADDRESS OTHER POSSIBILITIES AND PROCEDURAL QUESTIONS AT THIS TIME. U.K. INDICATED THAT NEW CONSULTATION PROCEDURES CAN BE ESTABLISHED IN THE FUTURE IN LIGHT OF EXPERIENCE, AND PROPOSED THAT PROCEDURES BE REVIEWED AFTER THREE YEARS. THERE WAS GENERAL SUPPORT FOR COMPROMISE OFFERED BY CHAIRMAN AT LAST CIME (REFTEL I) ON ENTERPRISE PARTI-

CIPATION, ALTHOUGH SWEDEN DID NOT SEEM FULLY CONVINCED.
U.S. DEL INDICATED USG NOT FULLY HAPPY WITH THAT TEXT,
BUT WOULD CONSIDER IT SYMPATHETICALLY AS REPRESENTING
THE BEST PROBABLE BASIS FOR AGREEMENT BY JUNE.

4. THERE WAS LONG DISCUSSION OF PURPOSE OF SECRETARIAT
REVISION OF PARA 1, WHICH DERIVED PARTLY FROM INTERPRE-

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PAGE 01 OECD P 05022 02 OF 07 191817Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

OIC-02 STR-04 FTC-01 L-03 H-02 PA-01 PRS-01 USIA-06

SS-15 NSC-05 AGR-05 /121 W

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R 191748Z FEB 76

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TO SECSTATE WASH DC 0695

LIMITED OFFICIAL USE SECTION 02 OF 07 OECD PARIS 05022

TATION THAT CIME HAD DECIDED TO DELETE WORD "GENERAL"
FROM TEXT. U.S. DEL CHALLENGED THAT CONCLUSION AND
EXPRESSED STRONG RESERVATIONS ABOUT PERMITTING BIAC AND
TUAC TO COMMENT ON SPECIFIC MATTERS THAT MIGHT BE
BROUGHT BEFORE COMMITTEE BY GOVERNMENTS. U.K. THEN PRO-
POSED REVISION WHICH WAS ULTIMATELY ADOPTED BY WORKING
GROUP WITH BRACKETS PLACED AROUND WORD "GENERAL" BY
SWEDEN.

5. U.K. MADE OBSERVATION THAT IT WAS PREPARED TO ACCEPT

CHAIRMAN'S COMPROMISE ON ENTERPRISE PARTICIPATION ON ASSUMPTION THAT NO COUNTRY WOULD VETO THE PARTICIPATION OF AN ENTERPRISE WHERE OTHER COUNTRIES FELT STRONGLY ABOUT SUCH PARTICIPATION. U.K. DEL INDICATED IT WOULD EXPECT U.S. ASSURANCES TO THAT EFFECT. U.S. DEL MADE NO RESPONSE ON THIS POINT, BUT U.K. DEL MAY WELL REITERATE QUESTION IN CIME. (COMMENT: U.S. SHOULD PROBABLY AVOID ANSWERING THIS QUESTION IF WE CAN, BUT POSSIBLE REPLY COULD BE TO INDICATE THAT THE U.S. WOULD CONSIDER LIMITED OFFICIAL USE

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PAGE 02 OECD P 05022 02 OF 07 191817Z

SUCH AN ISSUE ON ITS MERITS AT THE TIME IT ARISES, IN LIGHT OF CIRCUMSTANCES OF PARTICULAR CASE AND BASIC PURPOSES OF GUIDELINES AND OF CONSULTATION PROCEDURES AS WE UNDERSTAND THEM.

6. TEXT OF CONSULTATION DOCUMENT FORWARDED TO CIME READS AS FOLLOWS:

BEGIN TEXT

1. THE COMMITTEE SHALL PERIODICALLY OR AT THE REQUEST OF A MEMBER COUNTRY HOLD AN EXCHANGE OF VIEWS ON MATTERS RELATED TO THE GUIDELINES AND THE EXPERIENCE GATHERED IN THEIR IMPLEMENTATION. THE COMMITTEE SHALL PERIODICALLY REPORT TO THE COUNCIL ON THESE MATTERS.

2. THE COMMITTEE SHALL PERIODICALLY INVITE BIAC AND TUAC TO EXPRESS THEIR VIEWS ON (GENERAL) MATTERS RELATED TO THE GUIDELINES, AND SHALL TAKE ACCOUNT OF SUCH VIEWS IN ITS REPORTS TO THE COUNCIL.

3. WITHIN THESE REVIEWS QUESTIONS OF INTERPRETATION AS WELL AS SPECIFIC ISSUES MAY BE RAISED BY MEMBER COUNTRIES. IN CONSIDERING SPECIFIC ISSUES, THE (COMMITTEE) SHALL DETERMINE IN EACH CASE THE PROCEDURE TO BE FOLLOWED INCLUDING THE DESIRABILITY OF INVITING ENTERPRISES TO EXPRESS THEIR VIEWS.

4. THE REVIEWS SHALL NOT RESULT IN CONCLUSIONS BEING PASSED ON THE BEHAVIOUR OF SPECIFIC ENTERPRISES.

5. FORMER PARAGRAPH 4 UNCHANGED: MEMBER COUNTRIES MAY REQUEST THAT CONSULTATIONS BE HELD IN THE (COMMITTEE) ON ANY PROBLEM ARISING FROM THE FACT THAT MULTINATIONAL ENTERPRISES ARE MADE SUBJECT TO CONFLICTING REQUIREMENTS. GOVERNMENTS CONCERNED WILL CO-OPERATE IN GOOD FAITH TO RESOLVE SUCH PROBLEMS, EITHER WITHIN THE (COMMITTEE) OR THROUGH OTHER MUTUALLY ACCEPTABLE ARRANGEMENTS.

6. THIS DECISION WILL BE REVIEWED AFTER A PERIOD OF
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PAGE 03 OECD P 05022 02 OF 07 191817Z

(THREE) YEARS.

END TEXT

7. U.S. NOTED THAT IT COULD NOT AGREE TO TEXT AT THIS
TIME, BUT THAT, WITH INCLUSION OF WORD "GENERAL" IN
NEW PARA 2, IT APPEARED ACCEPTABLE, PROVIDED THAT MINOR
DRAFTING CHANGES COULD BE OFFERED AT NEXT MEETING. (U.S.
DEL WAS, FOR EXAMPLE, THINKING OF PARA 3 WITH ITS DIS-
TINCTION BETWEEN QUESTIONS OF INTERPRETATION AND SPECI-
FIC ISSUES.) SWEDES INDICATED WILL ATTEMPT TO SELL NEW
TEXT, BUT COULD PROBABLY NOT ACCEPT WORD "GENERAL."

NATIONAL TREATMENT INSTRUMENT

8. U.S. DEL, ADDRESSING REFDOCS A AND C, REVIEWED HIS-
TORY OF NATIONAL TREATMENT INSTRUMENT, STRESSING SUB-
STANTIAL U.S. COMPROMISE OVER LAST MONTHS WHICH WAS
PREMISED ON ENDING INSISTENCE ON BINDING INSTRUMENT WITH
NARROW EXCEPTIONS PROCEDURE IN EXCHANGE FOR BROAD STATE-
MENT OF PRINCIPLE AND CONSULTATIONS PROCEDURE ON EXCEP-
TIONS WITHOUT EXPLICITLY RECOGNIZING NEED OR GROUNDS FOR
EXCEPTIONS. U.S. DEL WENT ON TO NOTE THAT NEW SECRE-
TARIAT LANGUAGE BEFORE DECISION PORTION WAS NOT BASED ON

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PAGE 01 OECD P 05022 03 OF 07 191825Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

OIC-02 STR-04 FTC-01 L-03 H-02 PA-01 PRS-01 USIA-06

SS-15 NSC-05 AGR-05 /121 W

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R 191748Z FEB 76

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LIMITED OFFICIAL USE SECTION 03 OF 07 OECD PARIS 05022

ANY DISCUSSION IN CIME AND, BY RECOGNIZING NEED FOR EXCEPTIONS, WAS REPUDIATION OF BASIS FOR U.S. COMPROMISE. EITHER NEW TEXT HAD TO BE MODIFIED OR U.S. WOULD INSIST UPON RETURNING TO WORK ON FORMULATING GROUNDS FOR EXCEPTIONS.

9. U.K. DEL (WHO HAD PRIVATELY SPOKEN TO SECRETARIAT LEGAL ADVISER (STEIN) AND WAS, THEREFORE, INDIRECTLY RESPONSIBLE FOR NEW LIST AND EMBARRASSED ABOUT IT) NOTED THAT THERE HAD EXISTED "INTELLECTUAL GAP" BETWEEN "DECLARATION" AND "DECISION" PARTS OF TEXT. OTHER DELS APPEARED NOT TO UNDERSTAND BASIS FOR U.S. CONCERN AND WERE RELATIVELY INDIFFERENT TO THIS DISCUSSION. U.S. DEL OFFERED NEW TRANSITION LANGUAGE WHICH EMPHASIZED NORMATIVE CHARACTER OF NATIONAL TREATMENT. OTHER DELS FOUND LANGUAGE TOO STRONG. RESULT OF DISCUSSION WAS PARTIALLY BRACKETED LANGUAGE COMBINING PART OF U.S. TEXT AND BALANCE OF NEW LANGUAGE OFFERED BY SECRETARIAT (BERTRAND). NEW TEXT AS FOLLOWS:
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PAGE 02 OECD P 05022 03 OF 07 191825Z

BEGIN TEXT

(CONSIDERING THAT THE MEMBER COUNTRIES HAVE RECOGNIZED IN THE DECLARATION THAT THE STANDARD OF NATIONAL TREATMENT IS THE NORM FOR THE TREATMENT OF FOREIGN CONTROLLED ENTERPRISES BY MEMBER COUNTRIES), IT IS APPROPRIATE TO ESTABLISH WITHIN THE ORGANIZATION SUITABLE PROCEDURES FOR REVIEWING LAWS, REGULATIONS AND ADMINISTRATIVE PRACTICES (HEREINAFTER REFERRED TO AS MEASURES) WHICH MAY DEPART FROM THE STANDARD. END TEXT

10. UK INDICATED IT COULD PROBABLY ACCEPT FULL NEW TEXT IF, IN EXCHANGE, US WOULD AGREE TO SUBSTITUTE

"WILL" FOR "SHALL" IN DECLARATION. NEW ZEALAND FOUND LITTLE TROUBLE WITH FULL TEXT. SWEDES THOUGHT WORD "NORM" WAS A BIT STRONG, BUT THAT US PROPOSAL WOULD NOT BE REJECTED OUT OF HAND.

11. DEVELOPMENTS ON OTHER POINTS IN INSTRUMENT WERE AS FOLLOWS: (A) USDEL PROPOSED INSERTION OF WORDS "CONSISTENT WITH INTERNATIONAL LAW" IN "DECLARATION" PORTION. ONLY SWEDEN APPEARED TROUBLED BY THIS, NOT BECAUSE OF SUBSTANCE BUT BECAUSE OF CONSTANT REFERENCE TO SUBJECT THROUGHOUT PACKAGE. OTHERS (FRG, EEC, VOGELAAR) SUPPORTED US AND LANGUAGE PUT IN, SUBJECT TO SWEDISH REVIEW; (B) "HAVING REGARD" PARAGRAPHS BEFORE DECLARATION WERE DELETED; (C) MOST DELS SUPPORTED CHANGE FROM "SHALL" TO "WILL", ALTHOUGH NEW ZEALAND AND AUSTRALIA WANTED WEAKER "SHOULD". (US DEL STATED HE COULD PROBABLY ACCEPT "WILL", ESPECIALLY IF US TRANSITION PARAGRAPH WERE ACCEPTED); (D) PARAGRAPH ON ESTABLISHMENT MOVED FROM 2 TO 4; (E) SAME PARA MODIFIED TO READ "THE INSTRUMENT DOES NOT DEAL WITH..."; AND (F) US PROPOSAL TO DELETE REFERENCE TO RECIPROCITY IN PARA 3 NOT COMMENTED ON BY DELS, BUT SECRETARIAT REJECTED PROPOSAL AS MODIFYING LONG ACCEPTED LANGUAGE.

GUIDELINES: RESTRICTIVE BUSINESS PRACTICES (RBP)
SECTION
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PAGE 03 OECD P 05022 03 OF 07 191825Z

12. DISCUSSION RPB SECTION OF MNE GUIDELINES CENTERED ON SWISS PROPOSAL TO ADD NEW ITEM (E) TO PARA 1 WHICH WOULD READ "DISCRIMINATORY (I.E. UNREASONABLY DIFFERENTIATED) PRICING" AND WOULD TRUNCATE PARA 2 TO READ: "REFRAIN FROM USING PRICING TRANSACTIONS BETWEEN AFFILIATED ENTERPRISES AS A MEANS OF AFFECTING ADVERSELY COMPETITION OUTSIDE THESE ENTERPRISES." US DEL SUPPORTED FIRST PART OF SWISS PROPOSAL BUT EXPRESSED CONCERN AT PROPOSAL THAT PARA 2 WHICH WOULD NO LONGER BE IN CONTEXT OF DISCRIMINATORY PRICING. DRAFTING GROUP DECIDED TO LEAVE TEXT AS IS IN REF DOC F AND TO CITE SWISS PROPOSAL IN COVER NOTE WHICH WOULD BE SENT TO CIME.

13. DRAFTING GROUP ACCEPTED CIME DECISION TO DELETE BRACKETED PHRASE IN PARA 3 OF RBP SECTION AS FOUND IN REF DOC F.

14. DRAFTING GROUP ACCEPTED NEW VERSION OF PARA 4 OF RBP SECTION (REF DOC B) EFFECTING US PROPOSED

REVISION.

15. US PROPOSED REVISION OF PARA 5 WAS GARBLED IN

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PAGE 01 OECD P 05022 04 OF 07 191828Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

OIC-02 STR-04 FTC-01 L-03 H-02 PA-01 PRS-01 USIA-06

SS-15 NSC-05 AGR-05 /121 W

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R 191748Z FEB 76

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TO SECSTATE WASH DC 0697

LIMITED OFFICIAL USE SECTION 04 OF 07 OECD PARIS 05022

SECRETARIAT TEXT (REF DOC B) AND OPPOSED BY FRG AND OTHERS ON GROUND THAT DELS SHOULD NOT AT THIS LATE DATE REOPEN TEXTS AGREED IN WORKING PARTY OF RBP COMMITTEE. DRAFTING GROUP AGREED ISSUE COULD BE REFERRED AGAIN TO CIME. (US DEL PRIVATELY INFORMED FRG DEL (VON DEWITZ) OF US DISAPPOINTMENT AND OF BOEKER'S BELIEF FRG HAD AGREED TO SUPPORT US ON THIS MATTER.)

16. DRAFTING GROUP AGREED TO US SUGGESTION TO CHANGE TITLE OF THIS SECTION TO "COMPETITION."

GUIDELINES: TAXATION SECTION

17. US DEL EXPRESSED CONCERN THAT US PROPOSED "CHAPEAU" FOR TAXATION SECTION "IN ACCORDANCE WITH LAWS AND REGULATIONS" WAS NOT REPRODUCED BY SECRETARIAT. OTHER DELS OBJECTED TO US "CHAPEAU". US DEL THEN MADE STRONG APPEAL FOR EITHER DELETION OF ENTIRE LIMITED OFFICIAL USE

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PAGE 02 OECD P 05022 04 OF 07 191828Z

SECTION OR ITS SUBSTANTIAL REVISION; BOTH WERE FIRMLY REJECTED BY DRAFTING GROUP. FINALLY, DRAFTING GROUP AGREED TO SEND FORWARD TEXT WITH US "CHAPEAU" IN BRACKETS. US CIRCULATED INFORMALLY TO SOME DELS REVISED PARA (1) WITH IDEA THAT IF IT FOUND SUPPORT IN CAPITALS, US COULD PROPOSE SUCH REVISION IN CIME. UK INDICATED IT COULD LIVE WITH FOLLOWING TEXT. BEGIN TEXT: ENTERPRISES SHOULD, (1) UPON REQUEST, PROVIDE THE TAXATION AUTHORITIES OF EACH OF THE COUNTRIES IN WHICH THEY OPERATE WITH THE INFORMATION NECESSARY TO ASSESS THE TAXES PAYABLE IN THAT COUNTRY IN CONNECTION WITH THEIR OPERATIONS. END TEXT. (PARA (2) WOULD REMAIN AS STANDS).

GUIDELINES: INTRODUCTION SECTION

18. DRAFTING GROUP ACCEPTED PARAS 1-4 OF INTRODUCTION UNCHANGED. IN PARA 6, DRAFTING GROUP AGREED TO ADD WORD "HOWEVER" TO LAST SENTENCE OF THIS PARA, SO IT WOULD READ, "THEY SHOULD HELP TO ENSURE, HOWEVER, THAT THE OPERATIONS OF THE ENTERPRISES..."

19. AFTER LONG DISCUSSION OF NEW DUTCH TEXT FOR PARA 8 DISTRIBUTED BY SECRETARIAT TO REPLACE UK TEXT DISCUSSED AT CIME (PARA 2 REFTEL I), DRAFTING GROUP ADOPTED UK TEXT WITH ADDITION OF PARENTHETICAL PHRASE "(WHETHER IT BE LOCAL ENTITIES, PARENT COMPANIES, OR OTHER)" AFTER THE WORDS "VARIOUS ENTITIES" IN FIRST SENTENCE OF UK PROPOSAL.

20. US DEL STATED STRONGLY THAT US UNWILLING TO REOPEN DISCUSSION OF PARA 9 OF INTRODUCTION BRACKETED IN REF DOC B (RE NON-DISCRIMINATION ON JAPAN'S INITIATIVE). DRAFTING GROUP AGREED TO SEND TO CIME LANGUAGE OF PARA 9, WITH EXPRESSION OF JAPANESE CONCERNS REGARDING THE LAST SENTENCE, IN COVER NOTE.

21. DRAFTING GROUP AGREED TO US PROPOSAL TO PLACE PARA 10 OF INTRODUCTION BETWEEN PARAS 7 AND 8 AND AGREED TO DELETE "WITHOUT PREJUDICE TO LOCAL REMEDIES," AT BEGINNING OF PARA 9 REF DOC B. DRAFTING LIMITED OFFICIAL USE

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PAGE 03 OECD P 05022 04 OF 07 191828Z

GROUP ALSO ACCEPTED US SUGGESTION TO REVISE END OF
PARA 10 TO READ "...THE RESOLUTION OF PROBLEMS
ARISING BETWEEN MNE'S AND GOVERNMENTS", ALTHOUGH
FRG QUESTIONS MIGHT RESULT IN BRACKETS.

GUIDELINES: TUAC LETTER

22. VOGELAAR DISTRIBUTED LETTER HE HAD RECEIVED
FROM HENRI B-ERTRAND , GENERAL SECRETARY OF TUAC.
IN HIS VIEW IT CONTAINED TWO POINTS WHICH NEEDED
CONSIDERATION: (A) CALL FOR A REFERENCE TO EFFECT
THAT GUIDELINES WILL LEAD EVENTUALLY TO BINDING REG-
ULATIONS, AND (2) REQUEST FOR SPECIFIC REFERENCE
TO "TRADE UNIONS" IN LABOR AND INDUSTRIAL RELATIONS
PROVISION. US DEL, GERMANY, AND EEC OPPOSED SPECIFIC
REFERENCE TO BINDING REGULATION IN FUTURE AS OUT
OF PLACE IN VOLUNTARY GUIDELINE.

23. VOGELAAR AGREED NOT TO INSERT SPECIFIC "BINDING"
REFERENCE, BUT SAID HE WOULD SEEK TO MEET TUAC
POINT BY SUGGESTING LANGUAGE FOR INSERTION IN PARA
4 OF INTRODUCTION TO EFFECT THAT GUIDELINES CONSTI-
TUTED FIRST STEP WHICH MIGHT EVENTUALLY LEAD TO
INTER-GOVERNMENTAL COMMITMENTS DEALING WITH THESE

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PAGE 01 OECD P 05022 05 OF 07 191832Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

OIC-02 STR-04 FTC-01 L-03 H-02 PA-01 PRS-01 USIA-06

SS-15 NSC-05 AGR-05 /121 W

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R 191748Z FEB 76

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TO SECSTATE WASH DC 0698

LIMITED OFFICIAL USE SECTION 05 OF 07 OECD PARIS 05022

ISSUES. NO ONE RAISED OBJECTIONS TO THIS APPROACH.

24. UK SUGGESTED REFERENCE BE TO, "TRADE UNIONS OR OTHER BONA FIDE EMPLOYEE ORGANIZATIONS." US DEL AGREED. FRG DEL EXPRESSED DOUBTS. SWEDES PREFERRED EXCLUSIVE REFERENCE TO TRADE UNIONS, BUT INDICATED THEY COULD PROBABLY ACCEPT UK PROPOSAL. VOGELAAR SAID UK SUGGESTION WOULD BE NOTED IN NEXT SUBMISSION TO CIME.

GUIDELINES: GENERAL POLICIES SECTION

25. JAPAN PROPOSED AND DRAFTING GROUP ADOPTED REVISED PARA 4: "FAVOUR CLOSE LINKS WITH THE LOCAL COMMUNITY AND BUSINESS INTERESTS."

26. VOGELAAR PRESENTED NEW TEXT OF PARA 3 WHICH READ, "COMPLY WITH REQUIREMENTS BY THE AUTHORITIES OF THE COUNTRIES WHERE (SUCH) ENTITIES ARE LOCATED
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PAGE 02 OECD P 05022 05 OF 07 191832Z

FOR INFORMATION ON THEIR ACTIVITIES, TAKING INTO ACCOUNT LEGITIMATE REQUIREMENTS FOR BUSINESS CONFIDENTIALITY." BELGIUM SAID NEW TEXT MIGHT BE READ TO EXCLUDE ROLE OF MNE HEADQUARTERS. SWEDES SAID THEY AND NORWEGIANS WANTED IT MADE CLEAR THAT CONFIDENTIALITY WAS TO BE JUDGED BY COUNTRIES, NOT COMPANIES. US DEL AND EEC EXPRESSED PREFERENCE FOR OLD PARA 3. VOGELAAR SAID HE WOULD GO TO CIME WITH OLD TEXT AND LET NORWEGIANS AND ANY OTHERS RAISE ANY PROBLEMS THEY HAVE IN COMMITTEE.

27. VOGELAAR PROPOSED INSERTING FORMER PARA 2 FROM FINANCING AND TRADE SECTION AS NEW PARA 5 IN GENERAL POLICIES, WHICH WOULD READ: "ALLOW THEIR COMPONENT ENTITIES FREEDOM TO DEVELOP THEIR ACTIVITIES, CONSISTENT WITH THE NEED FOR SPECIALIZATION AND SOUND COMMERCIAL PRACTICE." THIS PROPOSAL RECEIVED GENERAL SUPPORT IN DRAFTING GROUP INCLUDING FRG AND

UK. US DEL DID NOT OBJECT.

28. VOGELAAR PUT FORTH FOLLOWING RE-DRAFT OF PARA 6:
"TAKE ACCOUNT OF INDIVIDUAL QUALIFICATIONS WITHOUT
DISCRIMINATION AS TO NATIONALITY WHEN FILLING RES-
PONSIBLE POSTS IN EACH COUNTRY OF OPERATION." US DEL
SUGGESTED QUALIFYING LANGUAGE SUCH AS, "CONSISTENT
WITH NATIONAL LAW" AND RECALLED PARTICULAR CONCERN
OF CANADA AT LAST CIME FOR GETTING IN THIS QUALIFI-
CATION. OTHERS, INCLUDING UK, EXPRESSED STRONG
PREFERENCE FOR RELYING ON PARA 7 OF INTRODUCTION AND
NOT INSERTING NATIONAL LAW REFERENCES IN SEPARATE
PROVISIONS. SECRETARIAT WILL SUBMIT NEW TEXT TO
CIME.

29. AFTER SOME DISCUSSION, DRAFTING GROUP ACCEPTED
SECRETARIAT MODIFICATION OF POLITICAL CONTRIBUTIONS
LANGUAGE TO MAKE CLEAR IT WAS NOT NECESSARY TO
HAVE LAWS SPECIALLY AUTHORIZING SUCH CONTRIBUTIONS.
LANGUAGE READS: "NOT MAKE CONTRIBUTIONS TO CANDID-
ATES FOR PUBLIC OFFICE OR TO POLITICAL PARTIES
OR OTHER POLITICAL ORGANIZATIONS UNLESS LEGALLY
PERMISSIBLE".

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PAGE 03 OECD P 05022 05 OF 07 191832Z

GUIDELINES: DISCLOSURE OF INFORMATION SECTION

30. VOGELAAR PRESENTED NEW TEXT OF PARA 1 (REF DOC B)
INCORPORATING CIME DECISION TO MOVE QUALIFYING REFER-
ENCE TO ENTERPRISE'S SIZE AND NATURE. AT FINNISH
REQUEST THIS INCLUDED "IN THE ECONOMIC CONTEXT" AFTER
"SIZE". GROUP ACCEPTED MINOR UK DRAFTING SUGGESTIONS
OF GRAMMATICAL CHARACTER. VOGELAAR AGREED TO NOTE
SWEDISH AND GREEK DESIRE TO OMIT "COST".

31. FOOTNOTE IN DISCLOSURE SECTION WITH BRACKETED
OPTION, "OR INDIVIDUAL COUNTRIES" ACCEPTED FOR
FORWARDING TO CIME. FRG DEL IN COURSE OF DIS-
CUSSION FAVORED LEAVING BRACKETS OUT, THUS, "GIVING
THE COMPANY THE OPTION". SWEDEN, SUPPORTED BY
ITALY AND GREECE, AGAIN EXPRESSED ITS PREFERENCE
FOR COUNTRY-BY-COUNTRY DISCLOSURE. EEC REPRESENTATIVE
(WOLFF) SAID HE WOULD LIKE TO SEE, "BY COUNTRY WHERE
APPROPRIATE" IN TEXT. US DEL MAINTAINED US POSITION
AGAINST COUNTRY REPORTING.

32. SWISS EXPLAINED THEIR PROPOSAL FOR SUBSTITUTE

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PAGE 01 OECD P 05022 06 OF 07 191835Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

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SS-15 NSC-05 AGR-05 /121 W

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R 191748Z FEB 76

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PARAGRAPH 2 (III), "THE OPERATING RESULTS FOR MAIN GEOGRAPHICAL AREAS OR THE SALES FOR MAIN GEOGRAPHICAL AREAS AND THE MAIN LINES OF BUSINESS", DESIGNED TO AVOID DIFFICULT REQUIREMENT FOR BREAKDOWN OF OPERATING RESULTS BY GEOGRAPHICAL AREAS. US DEL EXPRESSED SUPPORT FOR SWISS BUT INDICATED WE COULD LIVE WITH EARLIER FORMULATION. UK NOTED THAT CONCEPT OF GEOGRAPHIC BREAKDOWN OF OPERATING RESULTS HAD LONG SINCE BEEN ACCEPTED. SWEDEN ALSO WANTED EARLIER FORMULATION. SWISS MAINTAINED THEIR RESERVATION ON OPERATING RESULTS BY GEOGRAPHIC AREA, AND VOGELAAR INDICATED IT WOULD BE REFLECTED IN REPORT TO CIME.

33. VOGELAAR PROPOSED PUTTING "TOTAL REMUNERATION" IN SEPARATE POINT TO MAKE CLEAR GEOGRAPHIC BREAKDOWN NOT INTENDED. SWEDES OBJECTED AND SAID THEIR POSITION IS THAT TOTAL REMUNERATION SHOULD BE BROKEN DOWN AND THEY WANTED THIS FIRM

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PAGE 02 OECD P 05022 06 OF 07 191835Z

POSITION REFLECTED AT LEAST UNTIL THERE IS A RESOLUTION OF COUNTRY-BY-COUNTRY PROBLEM. JAPAN STATED ITS PREFERENCE FOR OLD TEXT IN REF DOC I, AND VOGELAAR AGREED TO RETURN TO THAT TEXT ON THIS POINT. BRACKETS WILL BE MAINTAINED.

34. SWISS AGREED TO WITHDRAW REQUEST FOR OMISSION OF PARAGRAPH 2 (VIII) ON BASIS GENERAL ASSURANCES THAT ONLY THE MOST GENERAL POLICY STATEMENT, E.G., "ARM'S LENGTH", WAS EXPECTED.

GUIDELINES: FINANCING AND TRADE SECTION

35. GREEKS TABLED THREE VARIATIONS OF THEIR PROPOSAL TO CONDEMN TRANSFER PRICE MANIPULATIONS WHICH WOULD HAVE ADVERSE EFFECTS ON BALANCE OF PAYMENTS. TURKS, SPANIARDS, AND ITALIANS SUPPORTED GREEKS, PARTICULARLY THE OPTION WHICH READS, "REFRAIN FROM APPLYING ARTIFICIAL TRANSFER PRICES WHICH COULD HAVE ADVERSE EFFECTS ON THE BALANCE OF PAYMENTS". US, UK, AND GERMANS SAW PROBLEMS WITH GREEK PROPOSALS, NOTING SUBSTANTIVE CONCERN IS COVERED ELSEWHERE, INCLUDING TAXATION. UK AGREED TO WORK WITH GREEKS AND SECRETARIAT TO COME UP WITH COMPROMISE PROPOSAL TO COVER GREEK CONCERN.

GUIDELINES: EMPLOYMENT AND INDUSTRIAL RELATIONS SECTION

36. DRAFTING GROUP DECIDED TO INSERT, "TRADE UNIONS OR OTHER" AFTER "BY" AND BEFORE "BONA FIDE ORGANIZATIONS" IN LINE 2 OF PARA 1 (REFDOC B). GERMANY MADE MILD RESERVATION PENDING REVIEW IN BONN, BUT DID NOT ASK FOR BRACKETS.

37. REFDOC B RAISED QUESTION OF NEED FOR "LAW AND REGULATIONS" "CHAPEAU." GERMANY AND U.S. DEL NOTED THAT ITS INCLUSION WAS PART OF PREVIOUS COMPROMISE AND INSISTED, WITHOUT OBJECTION, THAT IT STAY IN.

38. AFTER EXTENDED DISCUSSION, U.S. DEL AGREED WE WOULD CONTINUE TO CONSIDER IN WASHINGTON WHETHER WE MIGHT BE LIMITED OFFICIAL USE

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PAGE 03 OECD P 05022 06 OF 07 191835Z

ABLE TO AGREE TO U.K. PROPOSED COMPROMISE ON PARA 2(B):

"PROVIDE TO REPRESENTATIVES OF EMPLOYEES INFORMATION WHICH IS NECESSARY FOR MEANINGFUL NEGOTIATIONS ON CONDITIONS OF EMPLOYMENT AND, WHERE THIS ACCORDS WITH LOCAL LAW AND PRACTICE, WHICH ENABLES THEM TO OBTAIN A TRUE AND FAIR VIEW OF THE PERFORMANCE AND DEVELOPMENT OF THE ENTITY OR, WHERE APPROPRIATE, ENTERPRISE AS A WHOLE."

39. U.S. DEL CALLED FOR DELETION OF "THE WHOLE, OR A PART OF" BEFORE "AN OPERATING UNIT" IN LINE 5 OF PARA 7 AS PRESENTED IN REFDOK B. GERMANS PREFERRED TO HAVE IT IN. SWEDES SAID IT WAS THEIR PROPOSAL WHICH NO ONE OBJECTED TO AT CIME, NOTING THAT IT HAD ALSO BEEN PROPOSED BY BIAC. U.K., WITH GENERAL SUPPORT, AGREED TO DELETION DESIRED BY U.S. DEL ON BASIS THAT WE SHOULD NOT BE RE-OPENING AGREED TEXTS. GERMANS SAID THEY HAD RESERVED ON PARA 7 SO WERE NOT RE-OPENING. VOGELAAR INDICATED HE WOULD REVERT TO OLD PARA 7 (REFDOK I) AND NOTE GERMAN RESERVATION.

40. DUTCH INTRODUCED A RE-DRAFT OF PARA 8 TO MAKE IT BROADER AND MORE MEANINGFUL. U.S. DEL, SWISS, GERMANS, WITH GENERAL SUPPORT INSISTED ON KEEPING PARA 8 AS IT STANDS IN REFDOK I, EXCEPT FOR INSERTION OF "AUTHORIZED"

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PAGE 01 OECD P 05022 07 OF 07 191836Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

OIC-02 STR-04 FTC-01 L-03 H-02 PA-01 PRS-01 USIA-06

SS-15 NSC-05 AGR-05 /121 W

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TO SECSTATE WASH DC 0700

LIMITED OFFICIAL USE SECTION 07 OF 07 OECD PARIS 05022

BEFORE "REPRESENTATIVES" IN FIRST LINE, WHICH WAS PROPOSED BY DUTCH.

41. DISCUSSION FOLLOWED REGARDING MEANING OF PARA 8. GERMAN SAID SCOPE OF 8 IS CLEAR; LABOR'S RIGHT IS TO NEGOTIATE WITH AUTHORIZED REPRESENTATIVES WHETHER FROM LOCAL OR OTHER MNE ENTITY. U.S. DEL AGREED THAT ALTHOUGH RARE IN PRACTICE, NEGOTIATION COULD IN PARTICULAR CASES INVOLVE OTHER THAN LOCAL MNE REPRESENTATIVE.

42. NUMEROUS DELEGATIONS, INCLUDING U.S. DEL, CAUTIONED SECRETARIAT THAT OUR JOB WAS NOT TO INTERPRET GUIDELINES, AND STRESSED THAT SUBSTANTIVE REPLY TO LETTER FROM TUAC TO VOGELAAR SHOULD NOT GO FORWARD WITHOUT CONSULTATIONS WITH CIME CHAIRMAN. VOGELAAR SAID NOTE SHOULD GO TO CIME COVERING THIS DISCUSSION. U.K. SUGGESTED THAT NOTE MIGHT INDICATE THAT INTERNATIONAL COLLECTIVE BARGAINING IS NOT EXCLUDED BY PARA 8. U.S. DEL SAID THAT TERM "INTERNATIONAL COLLECTIVE BARGAINING" SHOULD NOT BE LIMITED OFFICIAL USE

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PAGE 02 OECD P 05022 07 OF 07 191836Z

USED, SINCE IT IS MISLEADING IN THIS CONTEXT AND, IN ANY CASE, IS A RED FLAG TO BUSINESS.

INCENTIVES/DISINCENTIVES INSTRUMENT

43. AFTER RELATIVELY BRIEF, BUT CONVOLUTED, DISCUSSION OF REFDOD D (U.S. DEL EXPRESS HIS STRONG DISSATISFACTION), IT WAS AGREED BY DRAFTING GROUP THAT REFDOD D WOULD BE WITHDRAWN AND THAT CIME WOULD RECONSIDER THE SUBJECT BASED ON CHAIRMAN'S DRAFT (REFTEL I) AS CIRCULATED AT LAST CIME MEETING.
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